

SENATE BILL 1805

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 4;  
Title 8; Title 9; Title 16; Title 41; Title 48; Title 50  
and Title 56, relative to workers' compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-238, is amended by adding the following language at the end of subdivision (a)(1):

A workers' compensation specialist shall have no authority to order an employer or insurer to provide to the employee either temporary disability benefits, medical benefits, specific medical treatment, or a list of physicians pursuant to § 50-6-204(a)(4) from which to select the treating physician unless an order is first issued by a workers' compensation specialist determining the employee's injury to be compensable under the Tennessee workers' compensation law or determining that the employee is entitled to such benefits pursuant to a final court order or a settlement agreement previously approved by the commissioner of labor and workforce development or designee pursuant to title 50.

SECTION 2. Tennessee Code Annotated, Section 50-6-238, is further amended by deleting subdivision (a)(3) in its entirety and substituting instead the following:

(a)

(3) Prior to determining whether it is appropriate to order the employer or insurer to provide medical benefits to the employee, the specialist shall first determine whether the employee's injury is compensable under the Tennessee workers' compensation law or whether the employee is entitled to such benefits pursuant to final court order or a settlement agreement previously approved by the commissioner of labor and workforce development or designee pursuant to §

50-6-206(c). If these conditions are met and if in light of available information, a workers' compensation specialist determines that it is appropriate to order the provision of medical benefits, the authority of a workers' compensation specialist shall include, but not be limited to, the authority to order specific medical treatment recommended by the authorized treating physician and the authority to require the employer to provide the appropriate panel of physicians to the employee, including a panel of appropriate specialists. The workers' compensation specialist shall also have the authority to enforce by order the provision of the panel of physicians as required under § 50-6-204(a)(4).

SECTION 3. Tennessee Code Annotated, Section 50-6-204, is amended by deleting subdivision (d)(5) in its entirety and substituting instead the following:

(d)

(5)

(A) A request for an independent medical examiner from the commissioner's registry, as established pursuant to § 50-6-204(d)(6), may be made in the following instances only:

(i) If the employer or its agent has provided the employee with the applicable panel or list of physicians from which a treating physician was chosen by the employee and the treating physician is unable or unwilling to provide a medical impairment rating, either the employee or employer may request an independent medical examiner from the commissioner's registry;

(ii) If the employer or its agent has provided the employee with the applicable panel or list of physicians from which a treating physician was chosen by the employee and the

employee disagrees with the impairment rating of the treating physician, the employee may request an independent medical examiner from the commissioner's registry provided the employee has not also obtained an independent evaluation, at his/her own expense that has resulted in a medical impairment rating;

(iii) If the employer or its agent has provided the employee with the applicable panel or list of physicians from which a treating physician was chosen by the employee and the employee has also obtained an independent evaluation, at his/her own expense, that has resulted in a medical impairment rating, either the employee or employer may request an independent medical examiner from the commissioner's registry; or

(iv) If the employer or its agent has permitted the employee to choose any physician as his/her treating physician in lieu of providing the employee with the applicable panel or list of physicians from which to choose a treating physician and the employer disagrees with the impairment rating of the employee's personally chosen treating physician, the employer may request an independent medical examiner from the commissioner's registry provided the employer has not also obtained an independent evaluation of the employee at the employer's own expense that has resulted in a medical impairment rating.

(B) It shall be the responsibility of the department of labor and workforce development to advise the employee, in plain and understandable language, of the employee's rights under the provisions of this subsection at such time as the employee is first contacted by the department following a report of a work-related injury. In addition, the department shall advise the employee that the department can assist in the request for an independent medical examiner if the employee is not represented by an attorney.

(C) It shall be the responsibility of the person who wants an independent medical examiner from the commissioner's registry to provide a written request to the commissioner for assignment of an independent medical examiner with a copy of the notice provided to the other party.

(D) Upon receipt of such written request, the commissioner shall provide the names of three (3) independent medical examiners chosen at random from the registry. The commissioner shall immediately notify the parties by facsimile or email when the list of independent medical examiners has been assigned to a matter, but in any event the notification shall be made within five (5) business days of the date of the request. The party requesting the independent medical examiner may strike one (1) name from the list, with such rejection made and communicated to the other party by facsimile or email not later than the third business day after the date on which notification of the list is provided. The other party shall select a physician to perform the

independent medical examination from the remaining physicians on the list,

(E) All costs and fees for an independent medical examination and report made pursuant to this subdivision (d)(5) shall be paid by the employer.

(F) The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary.

(G) The commissioner of labor and workforce development shall amend the current rules governing the independent medical examiners registry to comply with the requirements of this subsection. Such amended rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 and such amended rules shall take effect on January 1, 2008. The commissioner shall provide any proposed amended rules to the advisory council on workers' compensation, established by § 50-6-121 before the proposed amended rules are submitted to the attorney general and reporter. The advisory council on workers' compensation shall have thirty (30) calendar days from receipt of the proposed amended rules to provide written comment on the proposed amended rules. In addition, the commissioner shall provide to the advisory council on workers' compensation any changes to the proposed amended rules as suggested by the attorney general and reporter prior to filing the

proposed amended rules with the secretary of state's office. The commissioner is authorized to use public necessity rules under § 4-5-209(a)(4) or emergency rules under § 4-5-208, as appropriate, in order to have such amended rules in effect no later than January 1, 2008,

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.